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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/639,307	08/16/2000	Edouard A. Brodeur JR.	11-893	5059

7590 10/03/2002
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EXAMINER

JUSKA, CHERYL ANN

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 10/03/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/639,307

Applicant(s)

BRODEUR ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group II, claims 13-20, drawn to a carpet, in Paper No. 6 is acknowledged.

Information Disclosure Statement

2. The information disclosure statement filed on August 16, 2000, fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each U.S. and foreign patent; each publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The following references have not been considered due to lack of a copy:

- a. WO 9712944
- b. PCT/US96/20448
- c. Flooring Magazine, October 1994 issue.

In addition, WO 96/12844 has been added to the IDS since a copy of the reference was included.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 17, 18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,567,497 issued to Zegler et al.

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17, 20
Applicant claims a carpet roll comprising a tufted primary backing, a pre-coat, a ~~layer of~~
~~fused adhesive~~, and a mesh reinforced foam layer with foam nodules, wherein the ~~foam layer~~^{pre coat}
comprises a 100 parts PVC resin, 60-100 parts plasticizer, and 0-250 parts filler.

Zegler discloses a floor covering (i.e., carpet) in tile or roll form (abstract and col. 1, lines 14-15). The carpet comprises a tufted primary carpet, a thermoplastic backing layer (i.e., pre-coat), and a thermoplastic floor-contacting layer (col. 3, lines 34-39). The contact layer is fusibly compatible with the backing layer (col. 3, lines 39-47). Both the backing layer and the contact layer may be a plasticized polyvinyl chloride (PVC) polymer or copolymer layer (col. 4, lines 1-31 and col. 5, lines 18-44). The plasticizer is present in an amount ranging from 60-120 wt. % of the PVC polymer (col. 4, lines 14-22 and col. 5, lines 34-41) and the layer may or may not contain a filler (col. 4, lines 32-34 and col. 5, lines 45-49). The surface of the contact layer has a plurality of projections extending therefrom (col. 4, lines 1-46-49) in a variety of shapes, such as semi-spherical, semi-ovoid, triangular, diamond-shaped, pentagonal, or pyramidal nodules (col. 4, lines 56-62). The contact layer may be foamed to create a lower density (i.e., cushion) than the backing layer (col. 5, lines 50-57). The contact layer may include a reinforcing scrim with thermoplastic nodules (col. 6, lines 35-36). The contact backing is bonded to the lower backing "or a thin layer of thermoplastic fused to the lower backing layer" (i.e., a fusible adhesive layer) (col. 4, lines 62-66).

present.
With respect to the limitation in claim 20 that the ~~foam layer~~^{pre coat} is devoid of blowing agent, it is argued that the final foam product is devoid of blowing agent since said agent decomposes to produce the gas which creates the foam. Thus, claims 17, 18, and 20 are anticipated by the cited Zegler patent.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13, 14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,567,497 issued to Zegler et al. in view of US 5,545,276 issued to Higgins.

Claim 13 differs from claim 17 in that a reinforcing scrim layer is included in the structure to form a carpet tile. The limitations of claims 14 and 16 are analogous to the limitations of claims 18 and 20.

Zegler fails to explicitly teach a reinforcing scrim adjacent the pre-coat or thermoplastic layer. However, reinforcing scrims are well known in the art of carpets, especially carpet tiles. For example, Higgins teaches a reinforcing scrim layer embedded within an adhesive layer (col. 1, lines 23-25 and Figure 1A) or pre-coat layer (col. 6, lines 3-8). Thus, it would have been obvious to one skilled in the art to add a reinforcing scrim layer to the carpet of Zegler in order to enhance the dimensional stability of said carpet. Therefore, claims 13, 14, and 16 are rejected as being obvious over the cited prior art.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Zegler patent in view of the cited Higgins patent, as applied to claim 14 above and in further view of US 4,018,957 issued to Werner et al. and/or US 3,945,955 issued to Ihde, Jr.

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Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over the cited Zegler patent, as applied to claim 18 above and in further view of US 4,018,957 issued to Werner et al. and/or US 3,945,955 issued to Ihde, Jr.

Although Zegler does not explicitly teach the composition of the “thin layer of thermoplastic fused to the lower backing layer” (i.e., a fusible adhesive layer) (col. 4, lines 62-66), it is reasonable to presume that said thin layer would be similar to the composition of the backing layer and/or contact layer, since Zegler clearly teaches the importance of the layers being “fusibly compatible” (col. 3, lines 36-43). Thus, it would have been obvious to employ a PVC based compound similar to the backing and contact layer compositions disclosed by Zegler for the thin adhesive layer.

Zegler is silent with respect to the addition of a silicon surfactant and fumed silica. However, silicon surfactants in PVC compositions are well known in the art for use in reducing the density thereof. For example, Werner and Ihde teach silicone surfactant frothing agents in PVC compositions. (See Werner, col. 4, line 26-col. 5, line 2 and Ihde, col. 4, line 50-68 and col. 5, lines 50-55.) Thus, it would have been obvious to add a silicone surfactant to the PVC composition of Zegler in order to produce a proper density.

Zegler is also silent with respect to the use of fumed silica in the PVC composition. However, fumed silica is well known in the art as an inorganic filler. Applicant is hereby given Official Notice of this fact. The Examiner notes that the facts asserted to be common and well known are capable of instant and unquestionable demonstration as being well known. To adequately traverse such a finding, Applicant must specifically point out the supposed errors in the Examiner’s action, which would include stating why the noticed fact is not considered to be

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common knowledge or well known in the art. Thus, it would have been obvious to one skilled in the art to choose fumed silica as a filler for the PVC composition of Zegler, since fumed silica is known in the art as a common inorganic filler. Therefore, claims 15 and 19 are rejected as being obvious over the cited prior art.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Cheryl Juska whose telephone number is 703-305-4472. The Examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


CHERYL A. JUSKA
PRIMARY EXAMINER